

1 Ford Greene  
California State Bar No. 107601  
2 HUB LAW OFFICES  
711 Sir Francis Drake Boulevard  
3 San Anselmo, California 94960-1949  
Telephone: 415.258.0360  
4 Telecopier: 415.456.5318

FILED

JAN 13 1995

5 Attorney for Defendants  
GERALD ARMSTRONG and THE  
6 GERALD ARMSTRONG CORPORATION

HOWARD HANSON  
MARIN COUNTY CLERK  
by M. Louten, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF MARIN

10 CHURCH OF SCIENTOLOGY INTERNATIONAL,) No. 157 680  
11 a California not-for-profit )  
religious corporation, )  
12 )  
Plaintiff, )  
13 )  
vs. )  
14 )  
GERALD ARMSTRONG; MICHAEL WALTON; )  
15 THE GERALD ARMSTRONG CORPORATION )  
a California for-profit )  
16 corporation; DOES 1 through 100, )  
inclusive, )  
17 )  
Defendants. )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

ARMSTRONG'S SEPARATE  
STATEMENT OF DISPUTED AND  
UNDISPUTED FACTS IN  
OPPOSITION TO MOTION FOR  
SUMMARY ADJUDICATION OF  
THE FOURTH, SIXTH AND  
ELEVENTH CAUSES OF ACTION  
OF SECOND AMENDED  
COMPLAINT

Date: 1/27/95  
Time: 9:00 a.m.  
Dept: One  
Trial Date: May 18, 1995

20 RESPONDING PARTY GERALD ARMSTRONG'S STATEMENT OF DISPUTED AND  
21 UNDISPUTED FACTS

22 Defendant Gerald Armstrong ("Armstrong") submits this  
23 separate statement in opposition to Plaintiff Church of  
24 Scientology International's ("Scientology") separate statement of  
25 undisputed facts with reference to supporting evidence pursuant to  
26 CCP Section 437c (b).

RECEIVED

JAN 13 1995

HUB LAW OFFICES

COPY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ISSUE NUMBER I:

Scientology's Claim: The Church is entitled to summary adjudication of the Fourth Cause of Action because there is no dispute that the parties entered into a written agreement, that the Church performed all of its obligations pursuant to the agreement, that Armstrong breached the agreement by providing a declaration which purports to discuss his experiences with Scientology to anti-Church litigants Vicki and Richard Aznaran, and that the Church is entitled to liquidated damages of \$50,000.00 for this breach.

Armstrong's Claim: Scientology is not entitled to summary adjudication of the Fourth Cause of Action because liability for said cause of action is precluded by the litigant's privilege and the \$50,000 liquidated damages provision of the subject contract has no relationship to actual damages, acts as a penalty and is against public policy.

PLAINTIFF CSI'S MATERIAL FACTS  
AND SUPPORTING EVIDENCE

DEFENDANT ARMSTRONG'S MATERIAL  
FACTS AND SUPPORTING EVIDENCE

1. Gerald Armstrong entered into a confidential Mutual Release of All Claims and Settlement Agreement ("Agreement") with Church of Scientology International ("the Church") on December 6, 1986.

1. Undisputed.

Plaintiff's Evidence:

1 Request for Judicial Notice,  
2 Exhibit A, Verified Amended  
3 Complaint (hereinafter  
4 "Complaint"), ¶¶ 1 and 2;  
5 Request for Judicial Notice  
6 Exhibit B, Answer of Gerald  
7 Armstrong and the Gerald  
8 Armstrong Corporation to  
9 Amended Complaint (hereinafter  
10 "Answer"), ¶¶ 1 and 2; Exhibit  
11 1A, Deposition of Gerald  
12 Armstrong, Vol III, Oct. 7,  
13 1992, 301:2-12; 302:1-18, and  
14 Exhibit 6 thereto Exhibit 1B,  
15 Mutual Release of All Claims  
16 and Settlement Agreement, page  
17 16.

19 2. The Agreement was  
20 signed on behalf of the Church  
21 by its President, Reverend  
22 Heber Jentzsch.

2. Undisputed.

23 Plaintiff's Evidence:  
24 Exhibit 1B, Mutual Release of  
25 All Claims and Settlement  
26 Agreement, page 16.

27  
28

1           3.    The Agreement was  
2 signed by Armstrong's  
3 attorney, Michael Flynn,  
4 approving it as to form and  
5 content.

3.    Undisputed.

6           Plaintiff's Evidence:  
7 Exhibit 1B, Mutual Release of  
8 All Claims and Settlement  
9 Agreement, page 16.

10

11           4.    Armstrong signed and  
12 initialed the Agreement in the  
13 presence of his counsel,  
14 Michael Flynn, and witnesses  
15 Michael Sutter and JoAnn  
16 Richardson.    The signing was  
17 recorded by video.

4.    Undisputed.

18           Plaintiff's Evidence:  
19 Exhibit 1A, Deposition of  
20 Gerald Armstrong, Vol I,  
21 172:9-12, Exhibit 1C,  
22 Declaration of Larry Heller, ¶  
23 3, and Exhibits A and B  
24 thereto.

25

26

27

28

1           5.     Prior to signing the  
2 Agreement, Armstrong discussed  
3 its terms with his attorneys,  
4 Michael Flynn and Michael  
5 Walton. He also discussed it  
6 with a third attorney, Julia  
7 Dragojevich.

8           Plaintiff's Evidence:

9 Exhibit 1A, Deposition of  
10 Gerald Armstrong, Vol. I, June  
11 24, 1992, 37:14-20; 38:11-23;  
12 69:18-70:16.

5.     Disputed.

Armstrong objected to the terms of the contract in discussions with attorney Flynn. Flynn told Armstrong that the silence and liquidated damages clauses, and anything which called for obstruction of justice were not worth the paper they were printed on. He said the same thing a number of times and a number of ways; e.g., that Armstrong could not contract away his Constitutional rights; that the conditions were unenforceable. He said that he had advised the organization attorneys that those conditions in the settlement agreement were not worth the paper they were printed on, but that the organization, nevertheless, insisted on their inclusion in the settlement agreement and would not agree to any changes. He pointed out the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

clauses concerning Armstrong's release of all claims against the organization to date and its release of all claims against him to date (paras. 1, 4, 5, 6, 8) and said that they were the essential elements of the settlement and were what the organization was paying for. Flynn also said that everyone was sick of the litigation and wanted to get on with their lives. He said that he was sick of the litigation, the threats to him and his family and wanted out. He said that as a part of the settlement he and all co-counsels had agreed to not become involved in organization-related litigation in the future. He expressed a deep concern that the courts in this country cannot deal with the organization and its lawyers and their contemptuous abuse of the justice system. He said

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

that if Armstrong didn't sign the documents all Armstrong had to look forward to was more years of harassment and misery. One of Mr. Flynn's other clients, Edward Walters, who was in the room with Armstrong and Flynn during this discussion, yelled at Armstrong, accusing Armstrong of killing the settlement for everyone, and that everyone else had signed or would sign, and everyone else wanted the settlement. Flynn said that the organization would only settle with everyone together; otherwise there would be no settlement. He did agree to ask the organization to include a clause in Armstrong's settlement agreement allowing him to keep his creative works relating to L. Ron Hubbard or the organization (para. 7L). During Armstrong's meeting with Mr. Flynn in Los Angeles

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

he found himself facing a dilemma. If he refused to sign the settlement agreement and affidavit all the other settling litigants, many of whom had been flown to Los Angeles in anticipation of a settlement, would be extremely disappointed and would continue to be subjected to organization harassment for an unknown period of time. Armstrong had been positioned in the settlement drama as a deal-breaker and would undoubtedly lose the support of some if not all of these litigants, several of whom were key witnesses in his case against the organization. Although Armstrong was certain that Mr. Flynn and his other lawyers would not refuse to represent him if he did not sign the documents he also knew that they all would view him as a deal-breaker and they would be as disappointed as



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

the other litigants in not ending the litigation they desperately wanted out of. The prospect of continuing the litigation with unhappy and unwilling attorneys on his side, even though his cross-complaint was set for trial within three months, was distressing. On the other hand, if he signed the documents, all his co-litigants, some of whom he knew to be in financial trouble, would be happy, the stress they felt would be reduced and they could get on with their lives. Flynn and the other lawyers would be happy and the threat to them and their families would be removed. The organization would have the opportunity they said they desired to clean up their act and start anew. Armstrong would have the opportunity to get on with the next phase of his life and

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

the financial wherewithal to do so. Armstrong also at that time did not want to have to testify in all the litigation nor to respond to the media's frequent questions. If the organization continued its fair game practices toward him he knew that he would be left to defend himself and he accepted that fact. So, armed with Mr. Flynn's advice that the conditions he found so offensive in the settlement agreement were not worth the paper they were printed on, and the knowledge that the organization's attorneys were also aware of that legal opinion, Armstrong put on a happy face and the following day went through the charade of a videotaped signing.

There were absolutely no negotiations involving Armstrong in the liquidated damages provision. The figure of \$50,000 per utterance was

1 never approved by him, and he  
2 would never have approved if  
3 it had been presented to him  
4 for approval. It is not  
5 reflective of and has no  
6 relationship of any kind to  
7 any actual damages Scientology  
8 would suffer for each  
9 utterance he might make of his  
10 experiences inside the  
11 organization. Those actual  
12 damages are zero. In  
13 December, 1986 when he  
14 protested to Mr. Flynn the  
15 ridiculous sum and idea of  
16 liquidated damages Flynn  
17 stated "it's not worth the  
18 paper it's printed on." The  
19 discussion did not go beyond  
20 that.

21  
22 Defendant's Evidence:

23 Exhibit 1, Declaration of  
24 Gerald Armstrong, paras. 4-12.

25 Attorney Michael Walton  
26 advised Armstrong prior to  
27 Armstrong signing the  
28 settlement agreement that in

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

his opinion the liquidated damages provision would have to be reciprocal and apply to Scientology for it to be enforceable against Armstrong.

Defendant's Evidence:

Exhibit 1, Declaration of Gerald Armstrong para. 13.

Armstrong spoke to attorney Julia Dragojevic after he was threatened with litigation by Scientology attorney Larry Heller and Ms. Dragojevic told him she had a serious concern about the legality of the settlement agreement.

Defendant's Evidence:

Exhibit 1, Declaration of Gerald Armstrong, para. 15.

6. At the time he signed the Agreement, in the presence of his counsel and live witnesses, Armstrong had the following exchange with CSI attorney, Larry Heller:

6. Undisputed.

1 LARRY HELLER: O.K. Ah, Mr.  
2 Armstrong, I'm going to ask  
3 you to sign three documents,  
4 ah, a Mutual Release of All  
5 Claims and Settlement  
6 Agreement, and two separate  
7 affidavits. Prior to doing  
8 so, however, I would like to  
9 ask you some questions with  
10 regard to those documents, um-  
11 hm, excuse me, which I would  
12 like you to answer freely and  
13 honestly, if you would. Ah,  
14 first of all, have you had a  
15 chance to ah, completely and  
16 comprehensively review and  
17 read these documents?

18 ARMSTRONG: Yeah.

19 HELLER: O.K. Have you had a  
20 chance to discuss these  
21 documents with your attorney,  
22 Mr. Flynn?

23 ARMSTRONG: Yes.

24 HELLER: Has Mr. Flynn  
25 explained these documents as  
26 well as the legal and factual  
27 ramifications to you, legal  
28 and practical ramifications to  
29 you to your satisfaction?

30 ARMSTRONG: Uh, I think so,  
31 yes.

32 HELLER: O.k. Well, do you  
33 have any question of that  
34 whatsoever?

35 ARMSTRONG: No, I have no  
36 current questions about it.

37 HELLER: O.k. Very good, You  
38 are going to sign these of  
39 your own free will?

40 ARMSTRONG: Yes.

41 HELLER: O.k. You are not  
42 suffering from any duress or  
43 coercion which is compelling  
44 you to sign these documents?

45

1 ARMSTRONG: No.

2 HELLER: All right. You are  
3 not presently under the  
4 influence of alcohol or any  
5 medication, prescription or  
6 otherwise, which would impede  
7 your ability to comprehend the  
8 legal and factual intent of  
9 these documents?

10 ARMSTRONG: No.

11 Plaintiff's Evidence:

12 Exhibit 1C, Declaration of  
13 Larry Heller, ¶¶ 4 and 5,  
14 Exhibit A thereto, and Exhibit  
15 B thereto, 1:19-2:18.

16 7. Armstrong received a  
17 portion of a total sum paid to  
18 his attorney, Michael Flynn,  
19 in settlement of all claims of  
20 Mr. Flynn's clients.

7. Undisputed.

21 Plaintiff's Evidence:

22 Request for Judicial Notice,  
23 Exhibit A, Complaint, ¶ 13;  
24 Request for Judicial Notice,  
25 Exhibit B, Answer ¶ 13;  
26 Exhibit 1B, Mutual Release of  
27 All Claims and Settlement  
28 Agreement, ¶3.

8. Armstrong received

8. Undisputed.

1 approximately \$800,000.00 from  
2 Michael Flynn as his portion  
3 of the total settlement sum  
4 paid by CSI to Mr. Flynn for  
5 Flynn's settling clients.

6 Plaintiff's Evidence:

7 Exhibit 1D, Declaration of  
8 Graham Berry, and Exhibit B  
9 thereto; Exhibit 1E Marin  
10 Independent Journal, November  
11 11, 1992, article entitled,  
12 "Is Money The Root of Our  
13 Problems?"

14  
15 9. Paragraph 7(D) of  
16 the Agreement provides that:  
17 "Plaintiff agrees never to  
18 create or publish or attempt  
19 to publish, and/or assist  
20 another to create for  
21 publication by means of  
22 magazine, article, book or  
23 other similar form, any  
24 writing or to broadcast or to  
25 assist another to create,  
26 write, film or video tape or  
27 audio tape any show, program  
28 or movie, or to grant

9. Undisputed.

1 interviews or discuss with  
2 others, concerning their  
3 experiences with the Church of  
4 Scientology, or concerning  
5 their personal or indirectly  
6 acquired knowledge or  
7 information concerning the  
8 Church of Scientology, L. Ron  
9 Hubbard or any of the  
10 organizations, individuals and  
11 entities listed in Paragraph 1  
12 above. Plaintiff further  
13 agrees that he will maintain  
14 strict confidentiality and  
15 silence with respect to his  
16 experiences with the Church of  
17 Scientology and any knowledge  
18 or information he may have  
19 concerning the Church of  
20 Scientology, L. Ron Hubbard,  
21 or any of the organizations,  
22 individuals and entities  
23 listed in Paragraph 1 above.  
24 Plaintiff expressly  
25 understands that the non-  
26 disclosure provisions of this  
27 subparagraph shall apply,  
28 inter alia, but not be



1 limited, to the contents or  
2 substance of his complaint on  
3 file in the action referred to  
4 in Paragraph 1 hereinabove or  
5 any documents as defined in  
6 Appendix "A" to this  
7 Agreement, including but not  
8 limited to any tapes, films,  
9 photographs, recastings,  
10 variations or copies of any  
11 such materials which concern  
12 or relate to the religion of  
13 Scientology, L. Ron Hubbard,  
14 or any of the organizations,  
15 individuals and entities  
16 listed in Paragraph 1 above.  
17 The attorneys for Plaintiff,  
18 subject to the ethical  
19 limitations restraining them  
20 as promulgated by the state or  
21 federal regulatory  
22 associations or agencies,  
23 agree not to disclose any of  
24 the terms and conditions of  
25 the settlement negotiations,  
26 amount of the settlement, or  
27 statements made by either  
28 party during the settlement

1 conferences. Plaintiff agrees  
2 that if the terms of this  
3 paragraph are breached by him,  
4 that CSI and the other  
5 Releasees would be entitled to  
6 liquidated damages in the  
7 amount of \$50,000 for each  
8 such breach. All monies  
9 received to induce or in  
10 payment for a breach of this  
11 Agreement, or any part  
12 thereof, shall be held in a  
13 constructive trust pending the  
14 outcome of any litigation over  
15 said breach. The amount of  
16 liquidated damages herein is  
17 an estimate of the damages  
18 that each party would suffer  
19 in the event this Agreement is  
20 breached. The reasonableness  
21 of the amount of such damages  
22 are hereto acknowledged by  
23 Plaintiff.

24 Plaintiff's Evidence:

25 Exhibit 1B Mutual Release of  
26 All Claims and Settlement  
27 Agreement, ¶7(D).  
28

1           10. At the time the  
2 Agreement was signed, it was  
3 impossible to calculate the  
4 likely cost to the Church and  
5 the other settling entities  
6 should Armstrong breach the  
7 provisions of paragraph 7(D).

8           Plaintiff's Evidence:

9 Exhibit 1B Mutual Release of  
10 All Claims and Settlement  
11 Agreement, ¶7(D) Exhibit 1C,  
12 Declaration of Larry Heller,  
13 and Exhibits A and B thereto.

10. Disputed.  
Armstrong never participated  
in any discussions wherein he  
attempted to estimate the  
damages that would occur if  
there were a breach. Church  
of Scientology International  
secretary Lynn Farny was  
unable to specify what would  
be required to address a  
breach aside from attorney's  
fees which he admitted were  
covered by a different section  
of the settlement contract.  
Farny was not able to explain  
why an identical provision in  
two other contracts had  
liquidated damages provisions  
for \$10,000 for disclosures of  
information about Scientology.

21           Defendant's Evidence:

22           Exhibit 1 at ¶ 12; Ex. 2  
23 (A), Deposition of Lynn Farny,  
24 488-521), Ex. 2 (C) Release of  
25 Vicki Aznaran; Ex. 2 (D)  
26 Release of Rick Aznaran .

28           11. On May 16, 1994, the

11. Undisputed.

1 Second District Court of  
2 Appeal affirmed the trial  
3 court's order granting the  
4 Church a preliminary  
5 injunction.

6

7 Plaintiff's Evidence:

8 Request for Judicial Notice,  
9 Exhibit C, May 16, 1994 Court  
10 of Appeal Opinion, passim;  
11 Request for Judicial Notice,  
12 Exhibit D, May 28, 1992 Order  
13 granting preliminary  
14 injunction, passim.

15

16 12. In its May 16, 1994  
17 Opinion the Second District  
18 Court of Appeal found that  
19 "Armstrong did not deny the  
20 charged conduct but asserted  
21 the settlement was not  
22 enforceable for various  
23 reasons, primarily that it was  
24 against public policy and that  
25 he signed it under duress."

26 Plaintiff's Evidence:

27 Request for Judicial Notice,  
28 Exhibit C, May 16, 1994 Court

12. Disputed.

The statement of the  
Court of Appeal disregarded  
the fact that Judge Sohigian  
refused to entertain any  
testimony regarding the  
interactions between Armstrong  
and Flynn immediately before  
the signing of the contract.

Defendant's Evidence:

Ex. 2 (A), Transcript of  
Proceeding, Scientology v.  
Armstrong, Los Angeles

1 of Appeal Opinion, p. 5.

Superior Court No. BC 052395,  
May 26, 1992, at 73:27-74:2;  
91:10-92:14; 93:18-95:23.

2  
3  
4  
5 13. In its May 16, 1994  
6 opinion the Second District  
7 Court of Appeal summarily  
8 rejected Armstrong's proffered  
9 affirmative defenses, which  
10 included arguments, inter  
11 alia, that the Agreement was  
12 contrary to public policy;  
13 signed under duress; violated  
14 various constitutional  
15 provisions; restrained trade;  
16 lacked mutuality and  
17 obstructed justice; and that  
18 "CSI had actually and/or  
19 constructively defrauded  
20 Armstrong and had unclean  
21 hands.

13. Disputed. The Court  
of Appeal merely stated that  
the grant of a preliminary  
injunction did not decide the  
ultimate merits of the case,  
that Armstrong had not borne  
his burden on appeal to show  
an abuse of discretion, and  
declined to discuss his  
defenses any further.

Defendant's Evidence:

Plaintiff's Request for  
Judicial Notice, Exhibit C,  
May 16, 1994 Court of Appeal  
Opinion, at p. 10.

Plaintiff's Evidence:

22  
23 Request for Judicial Notice,  
24 Exhibit C, May 16, 1994 Court  
25 of Appeal Opinion, Exhibit 1F,  
26 pp. 9-10; Appellant's Opening  
27 Brief, pp. 24-49.

28

1 14. Armstrong argued to  
2 the Court of Appeal that some  
3 provisions of the Agreement  
4 violated the First Amendment.  
5 The Court of Appeal rejected  
6 this argument, holding,  
7 "Although Armstrong's 'Freedom  
8 of Speech' is affected, it is  
9 clear that a party may  
10 voluntarily by contract agree  
11 to limit his freedom of  
12 speech. (See In re Steinberg  
13 (1983) 148 Cal.App. 3d 14, 18-  
14 20 [filmmaker agreed to prior  
15 restraint on distribution of  
16 film]; ITT Telecom Products  
17 Corp. v. Dooley (1989) 214  
18 Cal.App.3d 307, 319  
19 [Employee's Agreement not to  
20 disclose confidential  
21 information; 'it is possible  
22 to waive even First Amendment  
23 Free Speech rights by  
24 contract']; Snepp v. United  
25 States (1980) 444 U.S. 507,  
26 509, fn 3 "[book by CSI  
27 employee subject to  
28 prepublication clearance by

14. Undisputed.

1 terms of his employment  
2 contract]."

3 Plaintiff's Evidence:  
4 Request for Judicial Notice,  
5 Exhibit C, May 16, 1994 Court  
6 of Appeal Opinion, Exhibit 1F,  
7 pp. 9-10; Appellant's Opening  
8 Brief, pp. 20-25.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

15. Vicki and Richard  
Aznanan are former Church  
members and, in 1991, were  
actively litigating against  
several Churches of  
Scientology. Vicki J.  
Aznanan, et al. v. Church of  
Scientology of California, et  
al., USDC Central District of  
California CV 88-1786 JMI(Ex)  
(hereinafter the "Aznanan  
case").

15. Undisputed.

Plaintiff's Evidence:  
Request for Judicial Notice,  
Exhibit A, Complaint, ¶ 18;  
Request for Judicial Notice

1 Exhibit B, Answer, ¶ 18;  
2 Exhibit 1A, Deposition of  
3 Gerald Armstrong, Vol II, July  
4 22, 1992, 183:1-3, Request for  
5 Judicial Notice Exhibit E,  
6 Complaint in the United States  
7 District Court for the Central  
8 District of California, Case  
9 No. CV 88-1786 JMI(Ex), Vicki  
10 J. Aznaran, et al. v. Church  
11 of Scientology of California,  
12 et al.

14 16. In July, 1991, while  
15 attorney for the Aznarans,  
16 former Church attorney Joe  
17 Yanny "hired Gerry Armstrong  
18 as a paralegal to help [Yanny]  
19 on the Aznaran case. . ."

20 Plaintiff's Evidence:  
21 Exhibit 1G, Transcript of  
22 Proceeding RTC et al. v. Yanny  
23 et al., Case No. BC 033035,  
24 August 6, 1991, 25:19-21,  
25 Exhibit 1H, Declaration of  
26 Joseph A. Yanny, July 31,  
27 1991, 4:21-22.

28

16. Disputed. Armstrong  
was not hired by Yanny. The  
sum total of the assistance  
that Armstrong provided to  
Yanny was to execute two  
declarations as a witness.

Defendant's Evidence  
Exhibit 1, Declaration of  
Gerald Armstrong at ¶ 16.



1           17. In August, 1991,  
2 Armstrong began helping Ford  
3 Greene as a paralegal for the  
4 Aznarans. Greene tried to  
5 convince the Aznarans to pay  
6 him a monthly stipend for  
7 Armstrong, so that Armstrong  
8 could work on the Aznaran  
9 case.

10           Plaintiff's Evidence:

11 Exhibit 1I, Declaration of  
12 Vicki Aznaran dated May 19,  
13 1994, p. 5, ¶ 7, Exhibit 1J,  
14 Armstrong's Responses to CSI's  
15 Requests for Admission, July  
16 21, 1994, Request no. 4.

17  
18           18. On August 26, 1991,  
19 Armstrong signed a declaration  
20 for filing in the Aznaran case  
21 containing statements  
22 regarding his alleged  
23 experiences with and knowledge  
24 of the Church and L. Ron  
25 Hubbard.

26           Plaintiff's Evidence:

27 Exhibit 1A, Deposition of  
28 Gerald Armstrong, Vol III,

17. Disputed.

Greene never tried to get  
the Aznarans to pay Armstrong.

Defendant's Evidence

Exhibit 2, Declaration of Ford  
Greene at

18. Disputed.

Scientology misconstrues the  
declaration. Armstrong signed  
a declaration that  
authenticated two documents  
attached thereto.

Defendant's Evidence

Plaintiff's Evidence,  
Ex.1(A)11 Declaration of  
Gerald Armstrong In Opposition  
To Motion To Exclude Expert

1 322:19-323:7, 324:5-10,  
2 324:21-23, 325:1-10, 325:17-  
3 326:3, 327:8-10, and Exhibit  
4 11 thereto, Exhibit 1K,  
5 Armstrong Declaration, August  
6 26, 1991, Request for Judicial  
7 Notice, Exhibit A, Complaint,  
8 ¶¶ 37 and 59; Request for  
9 Judicial Notice, Exhibit B,  
10 Answer, ¶¶ 37 and 59.

Testimony filed August 26,  
1991 in Aznaran v.  
Scientology.

11  
12 ISSUE NUMBER II:

13 Scientology's Claim: The Church is entitled to summary  
14 adjudication of the Sixth Cause of Action because there is no  
15 dispute that the parties entered into a written agreement, that  
16 the CSI performed all of its obligations pursuant to the  
17 agreement, Armstrong breached the agreement by providing  
18 interviews to the media, and that CSI is entitled to liquidated  
19 damages of \$100,000.00 for these breaches.

20 CSI incorporates herein Undisputed Facts and Evidentiary  
21 Support Nos. 1 to 18, supra.

22 Armstrong's Claim: Scientology is not entitled to summary  
23 adjudication of the Sixth Cause of Action because the subject  
24 contract was obtained by duress and fraud, the \$50,000 liquidated  
25 damages penalty of the subject contract has no relationship to  
26 actual damages, acts as a penalty and is against public policy,  
27 and Armstrong's media contacts are protected by the litigant's  
28 privilege.

1 **PLAINTIFF CSI'S MATERIAL FACTS**  
2 **AND SUPPORTING EVIDENCE**

**DEFENDANT ARMSTRONG'S MATERIAL**  
**FACTS AND SUPPORTING EVIDENCE**

3  
4 19. In 1992, Armstrong  
5 had twelve contacts with media  
6 representatives, two of which  
7 were interviews with reporters  
8 from the Cable News Network  
9 ("CNN") and The American  
10 Lawyer magazine.

19. Undisputed.

11 Plaintiff's Evidence:

12 Exhibit 1A, Deposition of  
13 Gerald Armstrong, Vol III,  
14 341:24-342:16.

15  
16 20. On March 20, 1992,  
17 Armstrong and his counsel,  
18 Ford Greene, provided a  
19 videotaped interview to  
20 reporter Don Knapp of CNN.

20. Undisputed.

21 Plaintiff's Evidence:

22 Request for Judicial Notice,  
23 Exhibit A, Complaint, ¶ 44;  
24 Request for Judicial Notice  
25 Exhibit B, Answer, ¶ 44;  
26 Exhibit 1A, Deposition of  
27 Gerald Armstrong, Vol III,  
28 341:24-344:14; 345:10-16.

1           21. In the CNN  
2 interview, Armstrong discussed  
3 his knowledge of the Church of  
4 Scientology and L. Ron Hubbard  
5 which he had gained through  
6 his experiences with the  
7 Church of Scientology.

8           Plaintiff's Evidence:  
9 Request for Judicial Notice,  
10 Exhibit A, Complaint, ¶ 44;  
11 Request Answer, ¶ 44; Exhibit  
12 1L, Transcript of CNN  
13 Broadcast, Exhibit 1A,  
14 Deposition of Gerald  
15 Armstrong, Vol III, 343:19-  
16 344:4.

21. Disputed.  
In the CNN interview  
Armstrong stated, in total,  
"I'm an expert in the  
misrepresentations Hubbard  
made about himself from the  
beginning of Dianetics until  
the day he died." The  
remainder of the dialogue was  
provided to CNN by  
Scientology. Armstrong's  
knowledge of Hubbard's  
misrepresentations and fair  
game is not limited to the  
time prior to the execution of  
the settlement contract.

Following the 1986  
settlement he read several  
biographies and other  
materials specific to Hubbard  
and Scientology.

In his decision of June  
20, 1984 Judge Paul G.  
Breckenridge, Jr. found that  
Scientology harassed and  
abused perceived enemies with  
its "Fair Game" doctrine, and  
found Armstrong's testimony

credible and extremely persuasive.

Defendant's Evidence

Plaintiff's Exhibit 1L, Transcript of CNN Broadcast; Plaintiff's Exhibit 1A, Deposition of Gerald Armstrong, Vol III, 343:19-344:4; Exhibit 1, Declaration of Gerald Armstrong at ¶ 2; Exhibit 1(A) Memorandum of Intended Decision filed June 22, 1984 in Scientology v. Armstrong, Los Angeles Superior Court No. C 420153, at 7:9-14, 8:18-24; Exhibit 1(F) Title page and Table of Contents from L. Ron Hubbard - Messiah or Madman, by Bent Corydon, published in 1987.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22        22. Armstrong and his  
23 counsel, Ford Greene, were  
24 interviewed by reporter  
25 William Horne of The American  
26 Lawyer magazine. Armstrong  
27 made statements concerning his  
28 knowledge of and experiences

22. Disputed.  
A review of the deposition pages will show that Armstrong made no statements to reporter Horne regarding his experiences in and knowledge of Scientology prior to

1 with the Church of Scientology  
2 during that interview.

3 Plaintiff's Evidence:

4 Exhibit 1A, Deposition of  
5 Gerald Armstrong, Vol III,  
6 341:24-342:14, 348:21-360:19.

December 1986. Armstrong,  
did, however, discuss the  
instant litigation with  
reporter Horne.

Defendant's Evidence

Plaintiff's Exhibit 1A,  
Deposition of Gerald  
Armstrong, Vol III, 341:24-  
342:14, 348:21-360:19;  
Exhibit 1, Declaration of  
Gerald Armstrong, ¶ 17;  
Exhibit 1(D) Deposition of  
Gerald Armstrong, Vol III,  
349-359; Exhibit 1(E) Excerpt  
from July/August, 1992  
American Lawyer

17  
18 ISSUE NUMBER III:

19 Scientology's Claim: The Church is entitled to summary  
20 adjudication on the Eleventh Cause of Action because there is no  
21 dispute that the parties entered into a written agreement, that  
22 the Church performed all of its obligations pursuant to the  
23 agreement, Armstrong breached the agreement by providing a  
24 declaration which purports to discuss his experiences with the  
25 Church of Scientology to anti-Church litigant David Mayo, and that  
26 the Church is entitled to liquidated damages of \$50,000.00 for  
27 this breach.

28 CSI incorporates herein Undisputed Facts and Evidentiary

1 Support Nos. 1 to 18, supra.

2 Armstrong's Claim: Scientology is not entitled to summary  
3 adjudication of the Eleventh Cause of Action because liability for  
4 said cause of action is precluded by the litigant's privilege, the  
5 \$50,000 liquidated damages provision of the subject contract has  
6 no relationship to actual damages, acts as a penalty and is  
7 against public policy.

8 Armstrong incorporates herein his Disputed Facts and  
9 Evidentiary Support Nos. 1 to 18, supra.

10

11 PLAINTIFF CSI'S MATERIAL FACTS                      DEFENDANT ARMSTRONG'S MATERIAL  
12 AND SUPPORTING EVIDENCE                              FACTS AND SUPPORTING EVIDENCE

13

14            23. On May 27, 1992,  
15 Armstrong met with attorneys  
16 Jerold Fagelbaum and Gary  
17 Bright, attorneys for David  
18 Mayo and the Church of the New  
19 Civilization in the  
20 consolidated cases of  
21 Religious Technology Center et  
22 al. v. Robin Scott et al.  
23 United States District Court  
24 for the Central District of  
25 California, Case No. CV 85-711  
26 JMI(Bx), and Religious  
27 Technology Center et al. v.  
28 Larry Wollersheim et al.,

23. Undisputed.

1 United States District Court  
2 for the Central District of  
3 California, Case No. CV 85-  
4 7197 JMI(Bx). At the time,  
5 Fagelbaum and Bright were  
6 litigating a cross-claim in  
7 that case against inter alia,  
8 CSI.

9 Plaintiff's Evidence:

10 Request for Judicial Notice,  
11 Exhibit A, Complaint, ¶ 68;  
12 Request for Judicial Notice,  
13 Exhibit B, Answer, ¶ 68;  
14 Exhibit 1A, Deposition of  
15 Gerald Armstrong, Vol II,  
16 214:20-216:24.

17

18 24. At his meeting with 24. Undisputed.  
19 Fagelbaum and Bright,  
20 Armstrong executed a  
21 declaration purporting to  
22 authenticate an affidavit  
23 describing Armstrong's alleged  
24 experiences with the Church.

25 Plaintiff's Evidence:

26 Request for Judicial Notice,  
27 Exhibit A, Complaint, ¶¶ 68  
28 and 69; Request for Judicial



1 Notice, Exhibit B, Answer, ¶¶  
2 68 and 69; Exhibit 1A,  
3 Deposition of Gerald  
4 Armstrong, Vol II, 219:17-  
5 226:25, and Exhibit 8 thereto,  
6 Declaration of Gerald  
7 Armstrong, May 27, 1992.

8

9 DEFENDANT'S ADDITIONAL ISSUE

10 Fourth Cause of Action Defense: Armstrong's providing a  
11 declaration to the Aznarans is protected by the Litigant's  
12 Privilege.

13

25. Armstrong's Amended  
14 Answer to Scientology's  
15 Amended Complaint contains  
16 defenses of, inter alia,  
17 Duress and Undue Influence  
18 (Twelfth), Liquidated Damages  
19 Act as a Penalty (Twenty-  
20 Fourth), and Privilege (Forty-  
21 Third).

14

15

16

17

18

19

20

21

22

Defendant's Evidence

23

Plaintiff's Request for  
24 Judicial Notice, Ex. B,  
25 Amended Answer of Gerald  
26 Armstrong and The Gerald  
27 Armstrong Corporation to  
28 Amended Complaint at 29:10,

24

25

26

27

28

33:16, and 40:11.

26. The Aznarans' Complaint against Scientology, filed April 1, 1988, alleged, inter alia, Fraud, Intentional Infliction of Emotional Distress, False Imprisonment, claiming that they had been deceived, brainwashed, exploited, abused and damaged.

Defendant's Evidence  
Plaintiff's Request for Judicial Notice Exhibit E, Complaint, Vicki J. Aznaran, et al. v. Church of Scientology of California, et al., US District Court for the Central District of California, Case No. CV 88-1786 JMI(Ex) at 4:19-6:6; 19:14-20:16)

27. On or about July 29, 1991 Scientology filed a motion in the Aznaran case to exclude the testimony of Plaintiffs' Designated Expert

1 Witness Margaret Singer on  
2 Scientology's brainwashing of  
3 the Aznarans, on the grounds  
4 that it was scientifically  
5 unreliable and would  
6 necessitate an evaluation of  
7 religious beliefs.

8 Defendant's Evidence

9 Defendant's Request for  
10 Judicial Notice Exhibit A,  
11 Notice of Motion and Motion to  
12 Exclude Testimony of  
13 Plaintiffs' Designated Expert  
14 Witness Margaret Singer in  
15 Aznaran at 2:11-3:3.

16  
17 28. On August 26, 1991  
18 the Aznarans filed their  
19 opposition to Scientology's  
20 motion to exclude expert  
21 testimony.

22 Defendant's Evidence

23 Defendant's Request for  
24 Judicial Notice Exhibit B,  
25 Plaintiff's Opposition to  
26 Motion to Exclude Expert  
27 Testimony in Aznaran at 35:5-  
28 13.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

29. The Aznarans supported their Opposition with a declaration executed by Gerald Armstrong which authenticated two documents which showed Scientology's familiarity with brainwashing.

Defendant's Evidence

Defendant's Request for Judicial Notice Exhibit C, Declaration of Ford Greene Opposing Motion to Exclude Expert Testimony, Exhibit (F) thereto, Declaration of Gerald Armstrong in Opposition to Motion to Exclude Expert Testimony.

30. On June 23, 1992, Scientology's motion to exclude the testimony of Dr. Margaret Singer was denied.

Defendant's Evidence

Defendant's Request for Judicial Notice Exhibit D, Order Ruling on All Remaining Pending Motions, signed by US District Judge James M.

Ideman.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ISSUE

Sixth Cause of Action Defense: Armstrong's media contacts are beyond the scope of the settlement contract because they address the instant litigation.

31. Armstrong's CNN interview was directly related to the instant post-settlement litigation in which Scientology consented to CNN's taping of a March 20, 1992 hearing before the Honorable Michael B. Dufficy and participated in interviews with CNN in the hallway outside the courtroom after the hearing's conclusion.

Defendant's Evidence

Exhibit 1, Declaration of Gerald Armstrong at ¶ 17; Exhibit 1(A) thereto Breckenridge Decision and Exhibit 1(D) thereto Deposition of Gerald Armstrong, Vol III, 349-359;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Exhibit 1(E) Excerpt from July/August, 1992 American Lawyer; Exhibit 1(F) Title Page and Table of Contents from L. Ron Hubbard - Messiah or Madman, by Bent Corydon, published in 1987; Defendant's Request for Judicial Notice, Exhibit E, Request of CNN to Conduct Film and Electronic Media Coverage and Order filed March 20, 1992 in Scientology v. Armstrong, Marin Superior Court No. 152229 and Order that Filming is allowed, by Judge Michael B. Dufficy filed March 20, 1992 in Armstrong; Declaration of Ford Greene at ¶¶ 3-4)

32. Armstrong's interview by American Lawyer reporter William Horne was directly related to the instant post-settlement litigation and involved nothing more than what Judge Breckenridge stated in his

1 decision in Armstrong I.

2 Defendant's Evidence

3 Exhibit 1, Declaration of  
4 Gerald Armstrong at ¶ 17;  
5 Exhibit 1(A) - Breckenridge  
6 Decision; Exhibit 1(E)  
7 Excerpt from July/August, 1992  
8 American Lawyer.

9  
10 ISSUE

11 Eleventh Cause of Action Defense: Armstrong's providing a  
12 declaration to David Mayo is protected by the Absolute Litigant's  
13 Privilege.

14 33. On May 27, 1992  
15 David Mayo, defendant in the  
16 case of Religious Technology  
17 Center et al. v. Robin Scott  
18 et al. United States District  
19 Court for the Central District  
20 of California, Case No. CV 85-  
21 711 JMI(Bx), filed his  
22 opposition to Scientology's  
23 motion for a protective order  
24 re fifth request for  
25 production of documents and  
26 things. The things sought by  
27 Mayo included two audiotapes,  
28 commonly referred to as the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

MCCS tapes, which had been part of the case in Scientology v. Armstrong, LASC No. C 420153 (Armstrong I) and had been the subject of litigation know as US v. Zolin.

Defendant's Evidence

Defendant's Request for Judicial Notice Exhibit F, Defendants and Counter-Claimants Opposition to Plaintiffs and Counter-Defendants' Motion for Protective Order Re Fifth Request for Production of Documents and Things and for Sanctions, filed May 27, 1992 in Religious Technology Center et al. v. Robin Scott et al. United States District Court for the Central District of California, Case No. CV 85-711 JMI(Bx).

34. The declaration provided by Armstrong to Mayo authenticated a partial



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

transcript of the testimony of  
Laurel Sullivan in Armstrong I  
trial proceedings and an  
affidavit containing a partial  
transcript of the MCCS tapes.

Defendant's Evidence

Plaintiff's Evidence, Ex. 1  
(A) 8.

35. Mayo's opposition  
cited to the partial  
transcript of proceedings in  
Armstrong I and refered to the  
partial transcript of the  
tapes authenticated by  
Armstrong.

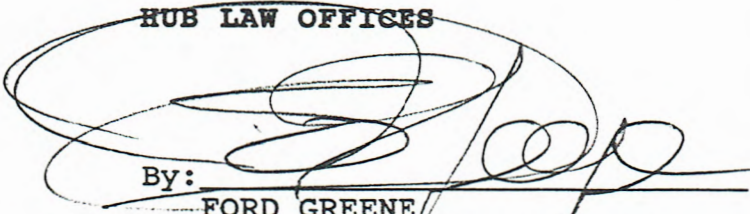
Defendant's Evidence

Defendant's Request for  
Judicial Notice Exhibit F,  
Defendants and Counter-  
Claimants Opposition to  
Plaintiffs and Counter-  
Defendants' Motion for  
Protective Order Re Fifth  
Request for Production of  
Documents and Things and for  
Sanctions, filed May 27, 1992  
in Religious Technology Center

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

v. Scott, at 4:18-5:22, 8:1-9:9.

DATED: January 13, 1995

HUB LAW OFFICES  


By: FORD GREENE  
Attorney for Defendants  
GERALD ARMSTRONG and THE  
GERALD ARMSTRONG CORP.